IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 192 of 2002
with
MISCELLANEOUS CRIMINAL APPLICATION NO.6991 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUBEN W/O KANJIBHAI RAVRANI - Applicant(s)

Versus

DIPAKBHAI DEVANI & 2 - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner No(s).: 1.

MR RM CHHAYA for Respondent No(s).: 1,2.
PUBLIC PROSECUTOR for Respondent No(s).: 3.

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CORAM :HON'BLE MR.JUSTICE JAYANT PATEL

Date : 14/07/2005

ORAL JUDGMENT

.1.With the consent of learned advocates appearing for both the sides, present petition is taken up for final hearing

today when the Misc.Cri.Application No.6991/05 is taken up for hearing.

.2.Short facts of the present case are that the petitioner has filed a complaint for defamation against the respondent Nos 1 and 2 who are Editor and Reporter respectively of a newspaper known as “Young Arohi”. It is the case of the petitioner in the complaint that reporting in the newspaper is defamatory because the newspaper reporting is of lowering down the character of the petitioner. On behalf of the complainant the petitioner was examined and in the examination in chief the original newspaper in which there was reporting was tendered as evidence. However, it appears that the same was objected on behalf of the respondent Nos 1 and 2 the Learned Magistrate heard the learned advocates for both sides on the aspect as to whether the newspaper should be exhibited or not. It appears that the learned Magistrate after hearing both sides observed that the newspaper is a secondary evidence and its contents are also required to be proved and ultimately passed the order not to exhibit the said newspaper. It appears that the petitioner carried the matter in revision before the Ld.Sessions Judge and the learned Sessions Judge as per order, dated 10.1.2002 dismissed the revision and confirmed the order passed by the learned Magistrate and it is under these circumstances the petitioner has approached this court by preferring this petition.

.3.Heard Ms.Mandavia, Ld.advocate for the petitioner, Mr.Hriday Buch for Mr.Chhaya on behalf of respondent Nos 1 and 2 and Mr.Gohil, Ld.APP for respondent No.3-State.

4.It appears that on facts there is no dispute and as such the question which was required to be considered by the trial court was as to whether the original newspaper which is tendered in defamation case can be exhibited as an evidence for supporting the case of the complainant or not. It deserves to be recorded that when the complaint is for the offence of defamation on the ground of reporting of certain news by the Editor or Publisher, it would be required for the prosecution/complainant to prove that such news was reported in the newspaper. Therefore, for proving the factum of reporting the newspaper is a primary evidence. Be it noted that in such a case it is not a primary evidence for contents of reporting, but only as a primary evidence for proving the factum of report by the Editor or Publisher, as the case may be. The burden of proving the contents thereof or the contents of the item or burden of proving the justification of reporting would be upon the accused even if it is in the capacity of a news reporter, editor or publisher though they may be claiming as falling within the exceptional categories as provided under section 499 of I.P.C.

5.It appears that the trial court as well as the Sessions Court, both have misdirected themselves in not properly considering the issue of proof of reporting and have wrongly considered the issue of contents of reporting. If the contents of report is to be used for proving the commission of offence, the newspaper itself can not be accepted as primary evidence and it will be required for the party to prove the contents thereof by proper evidence. However, for proving the factum of reporting,

the original copy of the newspaper can be produced in evidence. It appears that the Ld.Magistrate as well as the Ld.Sessions Judge have committed error in not considering the distinction between the proof of the factum for reporting and the proof of the contents of the report. As such, at the stage of examination in chief on behalf of the complainant the only aspect which was required to be considered was for exhibiting the document for proving the factum of reporting and not the contents of the report. Since the aforesaid distinction could not be properly considered by both the courts below. The decision in the matter of ***Quamarul Islam vs S.K.Kanta and others*** reported in ***AIR 1994 SC 1733*** would not be applicable to the facts of the present case since in the said matter the Apex Court considered the aspect of proving the factum of contents of the newspaper and not the factum of proving the reporting by the Editor or publisher.

6.If the matter is considered accordingly, it was required for Ld.Magistrate to overrule the objection raised on behalf of the accused and to exhibit the original newspaper which was tendered in the evidence on behalf of the complainant. Since the power is not exercised for such purpose, it appears that the error apparent on the face of record is committed by both the courts below. As such, the error committed by both the courts below deserves to be interfered with because if the factum of proof of reporting is not brought on record on behalf of the complainant it would frustrate the very basis of the complaint and therefore it may consequently result into great injustice to the parties to the proceedings. Even

otherwise also, it can be said that while exercising jurisdiction for accepting the document in evidence, error of jurisdiction is committed by the Ld.Magistrate and the same is wrongly confirmed by the Ld.Sessions Judge. Under the circumstances, the order passed by the Ld.Magistrate and its confirmation thereof by the Ld.Sessions Judge deserves to be quashed and set aside with direction to exhibit the original copy of the newspaper which is tendered in the examination in chief on behalf of the complainant in the matter of defamation.

7.The petition is allowed to the aforesaid extent. Rule is partly made absolute.

8.In view of the order passed in Special Criminal Application No.192/02, Misc.Criminal Application No.6991/05 would not survive and stands disposed of accordingly.

(JAYANT PATEL,J)

14.7.05/murty